

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner,
and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Exclusive
Representative.

CASE NO. RA-13-223

DECISION NO. 460

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On August 23, 2006, the COUNTY OF HAWAII ("COUNTY") filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit ("Petition") with the Hawaii Labor Relations Board ("Board"). The COUNTY seeks to exclude a new Position No. OO-04535, Personnel Management Specialist II, from bargaining unit ("Unit") 13, professional and scientific employees, who cannot be included in any of the other bargaining units, because the position is located in the Department of Civil Service, Classification and Pay Division and performs work that deals with confidential matters affecting employee-employer relations. The position will determine proper classification, bargaining unit and pay range assignments determines proper classification, bargaining unit, and pay range assignments of positions and the initial pricing of new classes; implements organizational changes that affect position classification; and participate in interjurisdictional equal pay reviews. Michael R. Ben, County Director of Personnel and Petitioner's representative ("Ben"), states in an affidavit attached to the petition, that the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO ("HGEA") concurs with the exclusion of the position from collective bargaining.

Based upon a review of the petition and the record in this case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is a public employer, as defined in Hawaii Revised Statutes ("HRS") § 89-2, of employees, including the employees included in and excluded from Unit 13.

2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in Unit 13.
3. According to the position description for Personnel Management Specialist II, Position No. OO-04535, under the general supervision of the Personnel Program Specialist, the position will perform the full range and variety of technical human resource work in the Classification and Pay Division. The position will advise human resource representatives in the line departments of policies and procedures and technical matters pertaining to classification and pay. The position provides professional support in the other functional areas of the central human resource agency and will perform the following duties in the approximate percentages of time:
 - a. Reviews position descriptions to determine whether changes in classification are warranted and recommends redescrptions as appropriate. Reviews requests for reallocations; conducts desk and on-site audits; prepares audit reports and recommends reallocations as appropriate. Reviews requests for new positions; prepares audit report with recommendation for proper classification and pay range assignments; prepares reallocations as appropriate. 25%.
 - b. Develops new class specifications; conducts desk and on-site audits; prepares audit reports with recommendation; prepares necessary documents for circulation of the proposed class and pricing to other jurisdictions; replies to inquiries on the proposal; and recommends final action to the Director. Reviews requests to amend class specifications; prepares reports of recommendations; prepares amended specifications and correspondence. 25%.
 - c. Reviews and makes recommendations on department's proposed reorganization plans; review effect of assignments on the classification of positions, the efficiency of the reorganization, and the overlap of functions with other divisions, departments, or agencies. Provides assistance to officials and line supervisors in the procedures and preparation of necessary documents for classification action. 25%
 - d. Reviews other jurisdiction's circulation of proposed new classes to ensure that classes in the same bargaining unit among jurisdictions that are determined to be equal based on objective criterial and job evaluation are paid the same; participates in inter jurisdictional classification meetings. 15%.

- e. Prepares all necessary documents to the appropriate union and to the Board for the exclusion of positions; responds to inquiries. 5%
- f. Performs assignments in other personnel areas, as required. 5%

Exhibit B.

- 4. According to the class specifications, the position performs the full range of technical assignments pertinent to one or more of the major functional areas of personnel management; and performs other related duties. The position is distinguished from a Personnel Management Specialist III in that the II independently performs the full range of technical assignments relating to one or more of the functional areas of personnel management and the III performs as staff specialist in one or more functional areas and regularly carries out the most difficult and complex assignments.

Exhibit C.

- 5. By letter dated July 19, 2006, Deputy Director of Personnel Ronald K. Takahashi notified HGEA Executive Director Russell Okata of the proposed exclusion of the Personnel Management Specialist II, Position No. OO-04535 from Unit 13. The position will perform the full range of professional journey level work in evaluating and determining the proper classification and pay range assignments of positions and the pricing of new classes of work. In addition, the position would advise human resource representatives, operating officials, and line supervisors on technical matters pertaining to classification and pay, including reorganization proposals and the effect of work assignments on the classification of positions. On July 24, 2006, Randy Perreira concurred with the proposed exclusion.

Exhibit A.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.
- 2. HRS § 89-6(f) provides, in part, as follows:

The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

* * *

(5) Individual concerned with confidential matters affecting employee-employer relations;

3. In interpreting the exclusionary language of HRS § 89-6, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In its interpretation of the legislative intent of the above-cited section, the Board, in Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), stated:

Giving the subject statutory phrase its plain and ordinary meaning, the Board believes the Legislature intended to exclude from coverage of Chapter 89, HRS, those individuals who, in the regular course of their employment, are concerned with matters "not intended for the eyes or ears of the rank and file or their negotiating representative" affecting employee-employer relations. We are of the opinion that the confidential matters must directly produce an effect upon or influence or alter employee-employer relations. In almost all conceivable cases, such an employee, if he is not himself a policy maker in the field of employee-employer relations, will be a subordinate of a managerial individual who formulates policy which directly influences or affects changes in employee-employer relations or who meets other criteria of a top-level manager.

Id. at 146-47.

In defining what constituted confidential matters, affecting employee-employer relations, the Board noted:

As to the question of the secretness of the data, it should be noted that under our law supervisors may be included in units. Hence, confidential employees must know matters pertaining to employee-employer relations which are not made known to included supervisors. Included supervisors may have authority to exercise independent judgment respecting hiring, transfers, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still be includable. Thus, the material with which employees must be concerned in order to be considered confidential employees under Chapter 89, HRS, must be different than that which is

known by supervisors concerning such aforementioned personnel matters...[Cite omitted.]

The Board is of the opinion that the term *employee-employer* relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting employee-employer relations which are made non-negotiable by Subsection 89-9(d), HRS, but upon which the employer is required by Subsection 89-9(c), HRS, to consult with the unions. [Emphasis in original.]

Id. at 147.

As summarized in Decision No. 95, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 89-6, HRS:

1. Working in the regular course of one's employment with matters
2. which are not intended for the eyes and ears of the rank and file and the unions
3. and which matters are capable of producing an affect or influence upon or change in employee-employer relations
4. such work normally being performed as a subordinate to an individual who is a managerial employee who formulates and effectuates management policy in the field of employment relations.

Id. at 147.

4. The new Personnel Management Specialist II, Position No. OO-04535 will work in the Department of Civil Service, Classification and Pay Division. The position will perform the full range of professional journey level work in evaluating and determining the proper classification, bargaining unit, and pay range assignments of positions and the pricing of new classes of work. The position will participate in interjurisdictional meetings to determine equal pay criteria and equal classes of work. The position will advise line departments and the Personnel Program Specialist on reorganization proposals and review the effect of reassignments on position classifications which may affect employee-employer relations. As such, the Board these are of a confidential

nature, not intended for the eyes and ears of the union as a subordinate to the Personnel Program Specialist. Based on the position's duties and responsibilities, the Board concludes that the position is a confidential position and should be excluded from bargaining unit 13 and coverage of HRS Chapter 89.

ORDER

Position No. OO-04535, Personnel Management Specialist II, is hereby excluded from collective bargaining unit 13, and the coverage of HRS Chapter 89 as a confidential employee.

DATED: Honolulu, Hawaii September 5, 2006.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

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